CLERK'S COPY.

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1929~~ 1930

No. ~~891~~ 112

THE UNITED STATES OF AMERICA

vs.

EDWARD BENZ

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

FILED MAY 13, 1930

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 891

THE UNITED STATES OF AMERICA

vs.

EDWARD BENZ

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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113615—30

1 In United States Circuit Court of Appeals for the Third Circuit

UNITED STATES OF AMERICA, APPELLANT
vs.
EDWARD BENZ, APPELLEE

March term, 1930
No. 4386

On appeal from the District Court of the United States for the Eastern District of Pennsylvania

Before BUFFINGTON and DAVIS, Circuit Judges, and JOHNSON, District Judge

CERTIFICATE TO THE SUPREME COURT

Filed April 23, 1930

Statement of facts

In order to be guided to a proper decision of this case, the Circuit Court of Appeals for the Third Circuit desires the instruction of the Supreme Court, and therefore, under authority of section 239 of the Judicial Code, certifies a question of law arising from the following facts:

Edward Benz was indicted at the June term, A. D. 1929, of the District Court of the United States for the Eastern District of Pennsylvania for a violation of the national prohibition act. On a plea of guilty, entered at the December term, A. D. 1929, of the said court, he was sentenced to imprisonment for a term of ten
2 months to commence December 27, 1929. He has been in prison since that date. On a petition by Edward Benz praying that his sentence be modified, the District Court on March 7, 1930, before the expiration of its said December term, and over the objection of the United States, made an order "that the sentence heretofore imposed upon the above-named defendant on December 12, 1929, of "'Imprisonment in the Mercer County jail, at Trenton, N. J., for a term of ten (10) months from December 27, 1929,' be changed and modified to the following:

"'Imprisonment in the Mercer County jail, at Trenton, N. J., for a term of six (6) months from December 27, 1929.'"

From that order the United States appealed. Pending the appeal the Circuit Court of Appeals, feeling that the question raised was one of importance to the administration of Federal criminal law and therefore should be certified to the Supreme Court, and being conscious that pending the certification the defendant might have served the full term of the sentence originally imposed, made an order for his release from prison upon the expiration of the shorter amended term, upon condition that he give bond for his return to prison to serve out the remainder of the longer term if the amended sentence should be found unlawful.

The question of law growing out of the foregoing facts upon which the Circuit Court of Appeals desires instruction by the Supreme Court of Appeals desires instruction by the Supreme Court is this.

Question certified

After a District Court of the United States has imposed a sentence of imprisonment upon a defendant in a criminal case,
3 and after he has served a part of the sentence, has that court, during the term in which it was imposed, power to amend the sentence by shortening the term of imprisonment?

Dated April 16, 1930.

(Signed) JOSEPH BUFFINGTON,
Circuit Judge.
J. WARREN DAVIS,
Circuit Judge.
ALBERT W. JOHNSON,
District Judge.

[File endorsement omitted.]

4 [Clerk's certificate to foregoing certificate omitted in printing.]

[Endorsement on cover:] File No. 35022. U. S. Circuit Court of Appeals, Third Circuit. Term No. 891. The United States of America vs. Edward Benz. Certificate. Filed May 13, 1930. File No. 35022.

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